

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ROBERT CANNON,)	
)	
PLAINTIFF,)	
)	
)	
v.)	CIVIL ACTION NO.
)	3:07cv846-wkw
)	
)	
)	
ADVANCED DISPOSAL SERVICES))	
ALABAMA LLC d/b/a)	
SUNFLOWER WASTE, LLC)	
)	
DEFENDANT.)	

EVIDENTIARY SUBMISSION IN SUPPORT OF PLAINTIFF'S
BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Plaintiff, and files the
following Evidentiary Submission in Support of his
Brief in Opposition to Defendant's Motion for
Summary Judgment. The submission is as follows:

1. Exhibit A - Deposition Excerpts and Exhibits of
the Deposition of Robert Cannon.

2. Exhibit B - Deposition Excerpts of the
Deposition of Sherry Beasley.

3. Exhibit C - Decision on Unemployment
Compensation Claims.

Respectfully submitted this the 1st day of
August, 2008.

/s/ James B Douglas, Jr.
James B. Douglas, Jr.
Attorney for Plaintiff
ALA BAR NO: 8935-U83J
P.O. Box 1423
Auburn, AL 36831-1423
(334) 821-1596

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of
the above and foregoing, by use of this Court's
electronic mailing system, on this the 1st day of
August, 2008.

J. Tobias Dykes
Constangy, Brooks & Smith, LLC
One Federal Place
Suite 900
1819 Fifth Avenue North
Birmingham, AL 35203

/s/ James B Douglas, Jr.

James B. Douglas, Jr.

EXHIBIT A

DEPOSITION EXCERPTS AND

EXHIBITS OF

ROBERT CANNON

1 that I'm right. Looking back at
2 Defendant's Exhibit 1 -- This is your name
3 on Defendant's Exhibit 1 as Robert Cannon?

4 A. Uh-huh (positive response).

5 Q. And this is your social security number on
6 Defendant's Exhibit 1?

7 A. Uh-huh (positive response).

8 Q. And that's a positive drug test for
9 cocaine; is that right?

10 A. That's what I see. Uh-huh (positive
11 response).

12 Q. Okay.

13 (Off-the-Record discussion.)

14 MR. DYKES: If y'all want to take
15 a quick break. I'm fixing to
16 get into his Advanced Disposal
17 employment.

18 MR. DOUGLAS: No. Let's roll on.

19 MR. DYKES: Okay.

20 (Off-the-Record discussion.)

21 Q. When did you start working for Advanced
22 Disposal?

23 A. January 23, '07.

1 A. Yes, that's it.

2 Q. Do you have any complaints about being
3 required to complete this form to give a
4 urinalysis test?

5 A. Say again.

6 Q. Do you have any complaints about Advanced
7 Disposal requiring you to take a urinalysis
8 test when you were hired?

9 A. Did I have any complaints?

10 Q. Yeah.

11 A. No.

12 Q. Did you give a urinal -- urine sample on
13 January 22, 2007?

14 A. Yes.

15 Q. Did you ever see the results of -- or the
16 test results from that urine sample?

17 A. From this one?

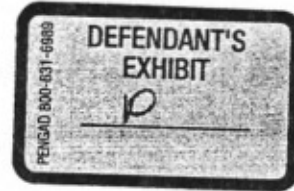
18 Q. Yes.

19 A. No. Talking about did I see it after he
20 gave me the test or did I ever see it?

21 Q. Did you ever see it while you worked for
22 Advanced Disposal --

23 A. No.

26



**St. Louis
MRO, Inc.**

Hand

3806 Jeffco Boulevard
Arnold, Missouri 63010
836/532-4099

ATTENTION:

Tony Davis
Advanced Disposal Services, Inc. - Del
9766 Normandy Blvd
Jacksonville, FL 32221

Participant: Robert Ranson
Other ID:
SSN: 420-88-2743

Results of DOT Controlled Substance Test

Record Status: Positive
Test Type: Pre-Employment
Collection Date/Time: 01/22/2007 2:48 PM
Batch ID: 20070202
Specimen ID: 51742580
Date COC Received: 01/22/2007
Sample Type: Urine

Laboratory: Quest Diagnostics
608 E State Parkway
Schaumburg, IL 60173
Collection Site: TALLASSEE FAMILY CARE
115 HERON HILL ROAD
TALLASSEE, AL 36878
Specimen Collector: JANE S BELLER

Substance Tested	Result
Amphetamines	Negative
Marijuana	Negative
Opiates	Negative

Substance Tested	Result
Cocaine	POSITIVE
Phencyclidine	Negative

MRO UNABLE TO CONTACT
TEST IS POSITIVE:
COCAINE

Horacio Manóvil M.D. MRO

2/2/2007

Verification Date

Feb 12, 2007

Results for Robert Ranson, Other ID: (SSN: 420-88-2743)

Printed on 2/2/2007 at 6:56:42PM

CONFIDENTIAL
ADS / CANNON
0028

03/20/2007 14:24 3347456783
MAR-19-07 07:41AM FROM: ST LOUIS MRO INC

OPELIKA HOUSING AUTH
6365322667

PAGE 05/05
T-812 P.001/001 F-323

ATTN:

ms. Pullum

[Handwritten signature]



*Client not
420-88-2743*

THIS IS THE COMPANY DRUG SCREEN

3895 Jeffco Boulevard
Arnold, Missouri 63010
636/582.4099

ATTENTION:

Tom Davis
Advanced Disposal Services, Inc. - Dot
9790 Normandy Blvd
Jacksonville, FL 32221

Participant: Robert Cannon
Other ID:
SSN: 420-88-2743



Results of DOT Controlled Substance Test

Record Status: Negative
Test Type: Pre-Employment
Collection Date/Time: 02/12/2007 08:42 AM
Batch ID: 28070214
Specimen ID: 6662214
Date COC Received: 02/12/2007
Sample Type: Urine

Laboratory: Quest Diagnostics
506 E State Parkway
Schaumburg, IL 60173
Collection Site: TALLASSEE FAMILY CARE
115 HERON HILL ROAD
TALLASSEE, AL 36078
Specimen Collector: JANE BELLEW

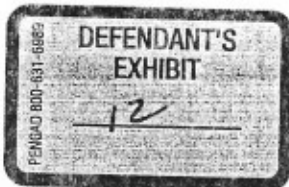
Substance Tested	Result	Substance Tested	Result
Amphetamines	Negative	Cocaine	Negative
Marijuana	Negative	Phencyclidine	Negative
Opoids	Negative		

[Handwritten signature]

Horacio Morafiot M.D. MRO

2/14/2007

Verification Date



personal

KENT V. KLINNER, JR., M.D.
1711 PEPPERELL PARKWAY
OPELIKA, AL 36801
(334)745-7098

EMPLOYEE NAME Robert Cannon COLLECTION DATE 2-12-07
ID/SSN 420-88-2743
TIME OF COLLECTION 10:18 AM NAME OF COLLECTOR TJ Curtis
Robert Cannon TJ Curtis
DONOR'S SIGNATURE COLLECTOR'S SIGNATURE

LOCATION OF TEST: 1711 PEPPERELL PKWY, OPELIKA, AL 36801

TIME OF TEST 10:20 AM

TEST OPERATOR TJ Curtis

TESTING RESULTS

COCAINE neg
AMPHETAMINES neg
THC neg
OPITAEBS neg
PCP neg

REMARKS _____

CUSTODY AND CONTROL

SPECIMEN RECEIVED BY TJ Curtis DATE 2-12-07
SPECIMEN DESTROYED BY TJ Curtis DATE 2-17-07

Robert Cannon
DONOR'S SIGNATURE

TJ Curtis
COLLECTOR'S SIGNATURE

1 I'm going to get Coke off the back of that
2 truck if it's the last thing I do. He was
3 talking about Coke Conway, the white guy.

4 Q. Okay.

5 A. So when I went and took this drug screen --
6 That's why I come back on my own and paid
7 out of my pocket and took one.

8 (Defendant's Exhibit 12 was marked
9 for identification.)

10 Q. I'm going to mark as Defendant's Exhibit 12
11 a drug screen from Kent V. Klimmer (sic).
12 Do you recognize this?

13 A. From Dr. Klinner.

14 Q. Do you recognize that, Mr. Cannon?

15 A. Yes.

16 Q. Is this the result -- Are these the results
17 of the drug test you took from Dr. Klimmer?

18 A. Yes.

19 Q. Okay.

20 MR. DOUGLAS: Just for the Record
21 it's Klinner, K-L-I-N-N-E-R.

22 MR. DYKES: Klinner.

23 MR. DOUGLAS: It looks like an M

1 Q. So the issue you had was you got done
2 sooner which left you to help out more?

3 A. Yes.

4 Q. What were you wanting them to do to help
5 you?

6 A. I was wanting everybody to pull they load,
7 everybody do they own route and then just
8 be -- That's it. Because it wasn't fair to
9 me to keep doing an hour and two hours
10 every day on somebody else's route.

11 (Defendant's Exhibit 9 was marked
12 for identification.)

13 Q. I'm going to mark as Defendant's Exhibit 9,
14 a collection form for urinalysis test. Do
15 you recognize this form that's been marked
16 as Defendant's Exhibit 9?

17 A. Yes.

18 Q. Is that your signature on Defendant's
19 Exhibit 9?

20 A. Yes.

21 Q. Is that your social security number at the
22 top of Defendant's Exhibit 9, the 428 --
23 420-88-2743?

1 I responded to him, I said, Danny, the
2 same day I took that drug screen I gave you
3 a copy where I went by a doctor. He said,
4 we can't recognize your personal doctor. I
5 said, well, he's not my personal doctor;
6 it's just a doctor office I stopped by to
7 take a drug screen. I said, and I gave it
8 to you. He said, well, I gave it to
9 Russell. I said, well, you still firing me
10 saying that that drug screen was positive.
11 He said, well, Russell told me to terminate
12 you. I said, well, okay.

13 Q. Anything said about your race when he was
14 terminating you?

15 A. No.

16 Q. Do you know who made the decision to
17 discharge you?

18 A. No.

19 Q. Did you ask Danny why he was following you?

20 A. Yes, I did.

21 Q. What did he tell you?

22 A. I asked him that -- Well, that Wednesday I
23 didn't say nothing to him. But that

1 A. Lie.

2 Q. How do you think you were slandered?

3 A. Well, when he lied about that, I mean, that
4 gave me a bad rep, a bad name. It will
5 hurt me in the future as far as getting
6 jobs or anything else.

7 Q. Do you know if anything was written that
8 you're complaining about?

9 A. If anything was written?

10 Q. Was written down that you're complaining
11 about.

12 A. You're saying did I write anything down?

13 Q. That -- If Advanced Disposal did. In the
14 documents you produced there was a thing to
15 Ann Dora's. I'm going to mark it as
16 Defendant's Exhibit 19.

17 (Defendant's Exhibit 19 was marked
18 for identification.)

19 A. Ann Dora's.

20 MR. DOUGLAS: What's your
21 question? I'm sorry.

22 Q. Are you complaining about what was
23 submitted to Ann Dora's, which is indicated

1 in Defendant's Exhibit --

2 A. Oh, yes.

3 Q. Okay. And this was in the documents that
4 you've already given us today?

5 A. Yes.

6 Q. What are you complaining about from this
7 document marked as Defendant's Exhibit 19?

8 A. I'm complaining about where it's saying in
9 here that I had positive drug urine and
10 violated the drug and alcohol policy. And
11 I'm also complaining about the date results
12 on there. She said the date come back on
13 3/9/07, but the date come back on 2nd 14,
14 '07.

15 Q. Your employment ended on 3/9/07; is that
16 right?

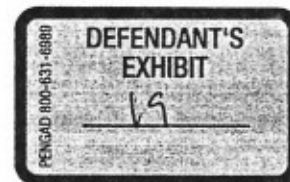
17 A. Yes, employment ended. But the way it --
18 Okay. I'm just going by the way it reads
19 to me.

20 Q. Right. I understand. I understand.

21 A. Uh-huh (positive response).

22 Q. Any other ways? Any other ways that you're
23 claiming that you were slandered?

ANN'DORA'S CUSTOM WROUGHT IRON



504 B Fairview st.
Montgomery, AL 36104
Telephone: (334) 224-0591 Fax: (334) 242-2157

FACSIMILE COVER SHEET

From
To:
With:

Cherry Sherry

Phone #
Fax #

Comments:

*Please fill out information
and Return*

If there is no inconvenience please respond back as soon as possible.
Thank You for Your Cooperation and Have a Great Day.

To
From: *[Signature]*

Total number of pages faxed: 2 (including cover sheet)

Date 4/2/07

04/02/2007 12:37 13342422157

WALLACE BUILDING

PAGE 02/02

PREVIOUS EMPLOYER INFORMATION REQUEST

FROM: ANN DORA'S
504 B FAIRVIEW ST
MONTGOMERY, AL 36104
334-224-0591 FAX 334-242-2157
CONTACT: ANTHONY FLOYD

PREVIOUS EMPLOYER
COMPANY: SUN FLOWER WASTE, LLC
STREET: 115 HERREN HILL RD.
CITY: TAUNTESSEE AL 36078
PHONE: 334-252-0458 FAX: 283-2670

THE PERSON NAMED BELOW HAS MADE APPLICATION FOR EMPLOYMENT AT ANN DORA'S AS A DRIVER. YOUR NAME WAS GIVEN AS A PAST/PRESENT EMPLOYER. YOUR PROMPT ATTENTION AND RESPONSE WILL BE GREATLY APPRECIATED.

APPLICANTS NAME Robert Cannon DATE 3/28/07
SOCIAL SECURITY # 420-82-2743 DRIVERS LICENSE# 4492920 STATE AL

ABOVE FILLED OUT BY APPLICANT

DATE OF EMPLOYMENT 1-23-07 TO 3-9-07 POSITION HELD Res DRIVER
INDICATE EQUIPMENT OPERATED: ☒ STRAIGHT TRUCK ☐ TRACTOR TRAILER

TYPE OF TRAILER _____
TYPE OF DRIVING? ☒ LOCAL ☐ OVER THE ROAD
IN COMPLIANCE WITH 49 C.F.R. 382, WAS THIS APPLICANT SUBJECT TO FEDERAL ALCOHOL & DRUG TESTING? ☒ YES ☐ NO

DID HE/SHE TEST POSITIVE ON DRUG TEST? ☒ YES ☐ NO ALCOHOL .04>? ☐ YES ☒ NO

IF YES, GIVE DATE AND EXPLAIN. 3-9-07 / results came back in reference to pre-employment testing - had to take 2 tests - 1st test had wrong SSN# on it
HAS THIS PERSON, IN THE LAST 2 YEARS, HAD ANY DRUG OR ALCOHOL VIOLATIONS? ☒ YES ☐ NO So we retested
IF YES, EXPLAIN. See Above

REASON FOR LEAVING Terminated!

WOULD YOU REHIRE? ☐ YES ☒ NO IF NO, PLEASE EXPLAIN violation of drug & Alcohol policy

WAS THIS PERSON INVOLVED IN ANY ACCIDENTS? ☐ YES ☒ NO IF SO, WHEN? _____

WAS ACCIDENT EMPLOYEES FAULT? ☐ YES ☐ NO IF YES, EXPLAIN N/A

NAME OF PERSON SUPPLYING INFORMATION Sherry Beasley
SIGNATURE Sherry Beasley

TITLE Office Manager
DATE 4-2-07

APPLICANT WAIVER
FORMER EMPLOYER: _____

DATE _____

I HEREBY AUTHORIZE YOU TO RELEASE THE ABOVE INFORMATION ALONG WITH ANY MEDICAL INFORMATION THAT MIGHT AFFECT MY ABILITY TO PERFORM IN THE POSITION I HAVE APPLIED FOR.

APPLICANT'S SIGNATURE Robert Cannon

WITNESS Bill Lucas

Please Fax RESPONSE: 1-334-242-2157

CONFIDENTIAL
ADS / CANNON
0058

EXHIBIT B

DEPOSITION EXCERPTS OF

SHERRY BEASLEY

1 ADP, get it back, just preview it and then
2 accept it.

3 Q. What's ADP?

4 A. It's the people who process our checks.

5 Q. An outside company?

6 A. Yes.

7 Q. With regard to your duties concerning
8 customer service, what do you do?

9 A. I handle customer service complaints. I
10 have customer service reps that take phone
11 calls and help the customers. If they have
12 an issue or a problem with an account, I
13 help them with that.

14 Q. Is it fair to say that you're available to
15 help the customers with whatever complaints
16 they may have?

17 A. Yes.

18 Q. And your company is in the business of
19 what?

20 A. Waste hauling.

21 Q. And in layman's terms, what does that mean?

22 A. Picking up garbage.

23 Q. And doing what with it?

EXHIBIT C

DECISION ON UNEMPLOYMENT

COMPENSATION CLAIM

STATE OF ALABAMA
DEPARTMENT OF INDUSTRIAL RELATIONS
HEARINGS AND APPEALS DIVISION
MONTGOMERY, ALABAMA 36130



DECISION ON UNEMPLOYMENT COMPENSATION CLAIM

CLAIMANT

ROBERT J CANNON
426 B TOOMER CT
OPELIKA AL 36801

EMPLOYER

JACKSON II DONWARD W ETAL
SUNFLOWER WASTE LLC
PO BOX 781150
TALLASSEE AL 36078-1150

APPELLANT : EMPLOYER
LOCATION : MONTGOMERY
(TELEPHONE)
OC NO. : 00-74

DATE MAILED : 04/20/07
CASE NO. : 03502-AT-07
S. S. NO. : 420-88-2743
HEARING DATE : 04/13/07

APPEARANCES AT THE HEARING: Claimant and employer representative with observer

ISSUE(S): Whether the claimant was discharged or removed from work for a dishonest or criminal act committed in connection with work or for sabotage or an act endangering the safety of others or for the use of illegal drugs after previous warning or for the refusal to submit to or cooperate with a blood or urine test after previous warning. Section 25-4-78(3)(a) Code of Alabama 1975

Availability for work. Section 25-4-77(a)(3) Code of Alabama 1975

FINDINGS: This employer, with whom the claimant had most recent bona fide work, appealed an Examiner's determination on a claim for unemployment benefits.

The claimant worked for the listed employer as a CDL driver from January 23, 2007, until March 9, 2007. The employer requires a pre-employment drug test, which the claimant took on January 22, 2007, before beginning work the following day. Because the employer was in the process of changing medical review officers, the results were not returned immediately. When the manager noticed the misspelling of the claimant's name, although the social security number was correct, the manager then asked the claimant to take another drug test, which he did, on February 12, 2007. On that same day, approximately two hours later, the claimant went to his own doctor, took the drug test, and returned the results to the employer, showing that it was negative. The results of the second drug test completed by the employer were also negative. The employer has a drug policy, which has been in effect for at least seven years. The claimant received a copy of the policy. The employer falls under the Department of Transportation's regulations. All employees are subject to drug testing. Their doctor's office collects the specimen, which is then sent to the medical review officer for the results. The results of the pre-employment test were returned on March 6, 2007. The manager's supervisor instructed him to terminate the claimant, based upon the positive results of the first drug test taken, which he did on March 9, 2007.

CONCLUSIONS: Section 25-4-78(3)(a) of the Law requires a disqualification of an individual discharged or removed from work for a dishonest or criminal act committed in connection with work or for sabotage or an act endangering the safety of others or for the use of illegal drugs after previous

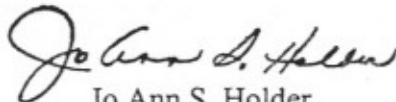
warning or for the refusal to submit to or cooperate with a blood or urine test after previous warning. The evidence presented in this case shows that although the claimant was given a test before employment, which was returned positive, his subsequent tests, as an employee of the company, were negative. In addition, he provided another drug test result showing negative from his own personal doctor. The evidence does not show that he would be subject to a disqualification under this section of the Law.

Section 25-4-77(a)(3) of the Law provides that an unemployed individual shall be eligible to receive benefits with respect to any week in a benefit year only if the Director finds that he is physically and mentally able and available to perform work of a character which he is qualified to perform based upon past experience or training. The evidence does not show that he would be unavailable for work. He would, therefore, not be subject to a disqualification under this section of the Law.

DECISION: The Examiner's determination under the provisions of Section 25-4-78(3)(a) of the Law is affirmed. No disqualification is imposed.

The claimant remains eligible for benefits under Section 25-4-77(a)(3) of the Law.

APPEAL RIGHTS: This decision becomes final unless an application for leave to appeal to the Board of Appeals is received in writing at the Department address above or by fax at 334-242-0539 on or before the **FINAL DATE OF May 7, 2007.**



Jo Ann S. Holder
Administrative Hearing Officer

JSH/amr